No. 10412

United States
Circuit Court of Appeals
For the Ninth Circuit.

AMERICAN GENERAL INSURANCE COMPANY, a corporation,

Appellant,

vs.

L. L. BOOZE, FRANK L. VINCENT, an individual, FRANK L. VINCENT, doing business under the firm name and style of Vincent's Dairy,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division

Rotary Colorprint, 590 Folsom St., San Francisco

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

Page

Answer of Frank L. Vincent 12

Answer of L. L. Booze ..... ~~10~~ 11

Appeal:

Certificate of Clerk to Transcript of Record on 21

Designation of Documents on 20

Designation of Documents on Appeal, Supplemental 30

Notice of 18

Notice of, Supplemental 28

Points and Authorities upon Which Appellant Intends to Rely on 23

Certificate of Clerk to Transcript of Record on Appeal 21

Complaint 2

Designation of Documents on Appeal 20

Supplemental 30

Judgment of Dismissal (Supplemental Transcript) 27

Minutes of Court—Feb. 25, 1943—Granting Motions to Dismiss 19

Motion to Dismiss of Defendant Frank L. Vincent 14

Motion to Dismiss of Defendant L. L. Booze.. 16

Names and Addresses of Attorneys 1

Notice of Appeal 18

Supplemental 28

Order Granting Motions to Dismiss..... 19

Points and Authorities Upon Which Appellant Intends to Rely (CCA) 23

Supplemental Transcript of Record..... 25

Designation of Documents on Appeal..... 30

Judgment of Dismissal..... 27

Notice of Appeal..... 28

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In The District Court of the United States, Northern District of California, Northern Division

No. 4526

AMERICAN GENERAL INSURANCE COMPANY, a Corporation,

Appellant,

vs.

L. L. BOOZE, FRANK L. VINCENT, an individual, FRANK L. VINCENT, doing business under the firm name and style of Vincent's Dairy,

Appellees.

COMPLAINT

Comes now the plaintiff and for cause of action alleges:

I.

Plaintiff American General Insurance Company is a corporation duly organized under and by virtue of the laws of the State of Texas, and at all times herein mentioned was, and now is, a citizen of, and domiciled in, said State of Texas. Plaintiff is admitted to do business in the State of California by virtue of having complied with all of the laws, rules and regulations of said State of California for the admission of a foreign corporation.

II.

Plaintiff is unaware of the true names or capacities, whether individual, corporate, associate or otherwise, of defendants Doe One, Doe Two, Doe

Three, Doe Four, Doe Five and Doe Six, and therefore sues the said defendants by such fictitious names, and leave of court will be asked to amend this complaint to show their true names and capacities when the same have been ascertained.

III.

The defendants L. L. Booze, Frank L. Vincent, an individual, and Frank L. Vincent doing business under the firm name and style of Vincent's Dairy, are citizens of, and domiciled in, the State of California.

IV.

As a part of the insurance business which the plaintiff is authorized to conduct in the State of California is included that of issuing certain agreements known as "Insurance Policies", for the purpose of indemnifying persons named in said policies, and protecting them under the conditions set out in said policies, from legal liability arising in connection with the maintenance, operation and ownership and driving of motor vehicles. In that connection the plaintiff had issued its policy No. 131186 to the defendant, Frank L. Vincent, as the "named assured" for the policy [1*] year beginning May 22, 1941, and ending May 22, 1942, which policy covered a 1940 Dodge one-ton canopy truck, Motor No. T96-5704, for use in connection with a commercial retail milk delivery business operated by the defendant, Frank L. Vincent, under the name and style of Vincent's Dairy; a photo-

*Page numbering appearing at foot of page of original certified Transcript of Record.

static copy of said policy of insurance issued to de-defendant Frank L. Vincent, together with the amendatory endorsement thereto, is attached to this complaint and marked Exhibit "A" and incorporated herein by reference as though fully set forth within this paragraph.

V.

On or about the 1st day of August, 1941, the defendant, Frank L. Vincent, was driving the 1940 Dodge truck described in the policy when said truck was involved in an accident with a Pontiac automobile driven by one Ray White, at the intersection of Nineteenth Street and Broadway Street in the City of Chico, County of Butte, State of California. At the time of said accident one Vernon Booze, a minor of the age of approximately fourteen years and the son of the defendant, L. L. Booze, was riding in a standing position on a step located at the back end of said 1940 Dodge truck which was owned and being driven by the defendant, Frank L. Vincent, at said time. As a result of said accident said Vernon Booze received injuries and died on or about August 3, 1941.

VI.

Subsequent to the happening of said accident and on or about the 22nd day of July, 1942, there was filed in the Superior Court of the State of California in and for the County of Butte, case No. 18996 entitled "L. L. Booze, plaintiff, versus Frank Vincent, an individual, Frank Vincent doing business under the firm name and style of Vin-

cent's Dairy, et al, defendants." The Frank Vincent referred to in said action is the Frank L. Vincent included as a defendant in this case, and a copy of the summons and complaint in said state court action has been served upon the defendant Frank L. Vincent, sued therein as Frank Vincent, an individual, and Frank [2] Vincent doing business under the firm name and style of Vincent's Dairy.

It is alleged in said complaint that L. L. Booze was the natural father of Vernon Booze, deceased, who upon the date of his death was a minor of the age of fourteen years, and that said minor met his death as a result of the wilful misconduct of Frank Vincent. It is further alleged in said complaint that by reason of the manner in which said Frank Vincent drove, maintained and operated said truck, and by reason of the reckless disregard by Frank Vincent of the probable consequences and safety of the minor, Vernon Booze, who was riding on said truck at the request of and with the consent of Frank Vincent said minor sustained fatal injuries to his head which resulted in his death two or three days after August 1, 1941. It is further alleged in said complaint that L. L. Booze by reason of the conduct of Frank Vincent was deprived of the society, comfort, protection and support of his minor son, Vernon Booze, and it is alleged that L. L. Booze was compelled to incur indebtedness for funeral expenses in the sum of Three Hundred Forty Eight Dollars Sixty Eight Cents ($348.68), doctor's bills in the sum of Seventy Five Dollars

($75.00) nurses' bills in the sum of Twenty Five Dollars and a bill for hospital services in the sum of Forty Nine Dollars Ninety Five Cents, ($49.95). It is alleged that in addition to said special damages L. L. Booze by reason of the death of said Vernon Booze was generally damaged in the sum of Twenty Five Thousand Dollars ($25,000.00).

The indemnifying contract or insurance policy issued by plaintiff to the defendant, Frank L. Vincent, as above set out, was in a principal sum to cover injuries or accident to one person, and was in double that sum to cover one accident, and said sum for one person was in excess of the sum of Three Thousand Dollars ($3000.00) but was less than Twenty Five Thousand Dollars ($25,000.00). Plaintiff, therefore, alleges that the amount of the controversy between the various defendants and itself herein is in excess of Three Thousand Dollars ($3000.00). [3]

VII.

Plaintiff has notified defendant Frank L. Vincent that plaintiff will not assume responsibility either for the defense of any law suit brought against said Frank L. Vincent by anyone because of claims on behalf of said Vernon Booze or on behalf of the heirs of said Vernon Booze resulting from the above described accident, and plaintiff has refused to contribute anything to the settlement of said claims and has refused to assume the defense of the action above described filed in the Superior Court of the State of California in and for the County of Butte by L. L. Booze.

VIII.

There is an actual controversy existing between plaintiff and defendants herein relative to the question of whether or not the policy of indemnification or insurance of the plaintiff did or does cover any claims made by L. L. Booze or any other party in connection with the injury and death of the minor, Vernon Booze, so as to establish responsibility against the plaintiff because of said contract of insurance. It is contended by the plaintiff that the deceased, Vernon Booze, was at the time of the accident above described acting as an employee or apprentice of the defendant, Frank L. Vincent, within the course and scope of his employment, and that as such employee, the sole remedy of the defendant, L. L. Booze, for the death of his son, Vernon Booze, is under the provisions of the Workmen's Compensation Act of the State of California. It is further contended by plaintiff that said policy of insurance does not cover any claims made or actions brought on account of the injury and death of said employee, Vernon Booze, and that there is no obligation under said policy to defend the action above described now pending in the state court, or to pay any judgment that might be rendered in said action. Plaintiff contends that the sole responsibility for the defense of any claims brought in connection with the death of Vernon Booze rests with Frank L. Vincent or with his workmen's compensation insurance carrier, if any. On the other hand, the defendants, [4] L. L. Booze and Frank L. Vincent, contend that the deceased, Vernon Booze,

was not in the employ of Frank L. Vincent at the time of the accident and claim that the plaintiff is liable and responsible on said insurance contract not only to Frank L. Vincent to defend him, in the above described state action, but also to L. L. Booze for any judgment, if any there be, entered in his favor and against Frank L. Vincent upon said judgment becoming final.

IX.

Unless it is legally determined that the plaintiff is not obligated to defend the defendant, Frank L. Vincent, in the action brought against him by L. L. Booze, this plaintiff will be required to set up reserves as required by law, to cover and protect against the possibility of unsuccessful defense, and reserves for the preparation and defense of the case, including legal fees, investigation costs, witness fees and court costs a trial and in preparation for trial. The action of L. L. Booze in the Superior Court of the State of California in and for the County of Butte against the defendant Frank L. Vincent is limited to issues which will not determine the questions presented in this petition for declaratory relief. Plaintiff contends that it should not be obliged to defend said action or to expend large sums of money necessarily involved in such defense and also that it should not be required to wait until said action has been tried and a judgment entered before securing a legal determination of this plaintiff's liability, if any, to the parties to said cause in the state court. Unless the issues here

presented are legally determined at this time it will be necessary for this plaintiff to establish and maintain for a long period of time a cash reserve covering the claims made and the action filed and the expenditures with reference thereto which it must make for its own protection unless this legal determination is now made, and this plaintiff claims, therefore, that these expenses of maintaining said reserve and making said investigation and incurring further expenses in preparation of this legal defense by way of fees, etc., should not be imposed upon the plaintiff if plaintiff's policy does not cover claims connected with the death of said Vernon Booze. [5] It is, therefore, of great importance that the question presented should be decided at the earliest possible date.

X.

All of the issues involved in the state action are in no way connected with the issues involved in this controversy respecting the rights of the plaintiff and the defendants herein concerning the policy of indemnification issued by the plaintiff as above described. A determination of the issues raised herein will establish the rights of the parties hereto and will relieve this plaintiff from the uncertainty which exists and will continue to exist while the issues of this petition are undetermined. The determination of the controversy presented by this petition will avoid a multiplicity of suits and will minimize the expense and costs to this plaintiff and will facilitate the determination of the liability, if any, of the plaintiff under its contract of insurance.

OPTIONAL COVERAGE FORM

Policy No. 131130

American General Insurance Company

HOUSTON, TEXAS

(A Stock Insurance Company herein called the Company)

DECLARATIONS

Item 1. Name of the Insured FRANK L. VINCENT

The Named Insured is INDIVIDUAL
(Individual, firm, partner, or Co-partners (If latter, give name of partners)

Address ROUTE 2, BOX 217B, CHICO, CALIFORNIA
(No.) (Street) (Town) (County) (State)

The automobile will be principally garaged and used in the above Town, County and State, unless otherwise specified herein

The occupation of the Named Insured is DAIRYMAN Employed by SELF
(If married woman, give husband's occupation or business)

Item 2. Policy Period: From the 22nd day of MAY 19 41 to the 22nd day of MAY, 19 42
12:01 A. M., Standard Time, at the address of the Named Insured as stated herein.

Item 3. The insurance afforded is only with respect to such and so many of the following Coverages as are indicated by a specific premium charge or charges set opposite thereto. The limit of the Company's liability against each such Coverage shall be as stated herein, subject to all of the terms of the policy having reference thereto.
(If issued as Actual Value Policy, insert words "Actual Cash Value" in lieu of amount of insurance.)

COVERAGES	Limits of Liability	Net Rates	PREMIUM AUTO 1	PREMIUM AUTO 2
A—Bodily Injury Liability	$ 10,000 each person and subject to that limit for each person $ 20,000. each accident	X X	$ 23.00	$
B—Property Damage Liability	$5,000.00 each accident	X X	$ 9.00	$
C—Comprehensive Cover (Excluding Collision)	$	$	$	$
D—Fire, Lightning and Transportation	$	$	$	$
E—Theft, Robbery and Pilferage	$	$	$	$
Collision or Upset	Actual Cash Value less $ (Deductible)	X X	$	$
Comprehensive Collision or Upset (DD-30 Form)	Actual Cash Value	X X	$	$
Charge for ____ as per endorsement attached		$	$	$
Charge for ____ as per endorsement attached		$	$	$
END, END. ATT.	TOTAL PREMIUM		$32.00	$

Item 4. Description of the automobile and the facts respecting its purchase by Named Insured:

	YEAR MODEL	TRADE NAME	TYPE OF BODY (GIVE TRUCK TONNAGE)	SERIAL NUMBER AND MOTOR NUMBER	No. of Cyls. and Model	Factory List Price	Actual Cost To Assured Includ. Equpmt.	Purchased by Assured Date of Bill Sale Month	Year
AUTO 1	40	DODGE	1 TON CANOPY	S 9285153	Cyls.				
				M T96-5704	MdD 21				
AUTO 2				S	Cyls.				
				M	Mdl.				

Item 5. The automobile is fully paid for by the named insured and there is no lien, mortgage or other incumbrance thereon except as follows:
If purchased on a deferred payment plan, the amount unpaid is represented by ____ order of $ ____ each. The date of first note is ____ 19 ____
Subject to all the terms of the policy, all of which are made a part of this lien, but if any, under Agreements C, D, E, F, G and H, payable as interest may appear to the Named Insured and
(Name and address of mortgagee)

Item 6. The purposes for which the automobile is to be used are COMMERCIAL RETAIL MILK DELIVERY
Purposes of use defined, (a) the term "pleasure and business" is defined as personal, pleasure, family and business use; (b) the term "business" is defined as use principally in the business occupation of the Named Insured as stated in Declaration 3, including occasional use for personal, pleasure, family and other business purposes; (c) use of the automobile for the purposes stated includes the loading and unloading thereof.

Item 7. No automobile insurance has been cancelled by any Company during the past three years except as herein stated
NO EXCEPTIONS

Item 8. The Named Insured is the sole owner of the automobile except as herein stated
NO EXCEPTIONS

This policy is made and accepted subject to the provisions, exclusions, conditions and declarations set forth in this entire policy, including endorsements attached now or hereafter.

IN WITNESS WHEREOF, this Company has caused and attested these presents; but this policy shall not be valid unless countersigned by a duly authorized representative of the Company.

CANCELLED Secretary

CANCELLED President

Countersigned at CHICO, CALIFORNIA

this 19th day of MAY 19 41

Agent

M. S. REYNOLDS

SPECIMEN

Policy No. 131186

PERSONAL COVERAGE PAPER

American General Insurance Company

HOUSTON, TEXAS
(A Stock Insurance Company herein called the Company)

DECLARATIONS

Item 1. Name of the Insured FRANK D. VINCENT

The Named Insured is INDIVIDUAL (Individual, Corporation, or Co-partnership. If latter, give names of partners)

Address ROUTE 2, BOX 217B, CHICO, CALIFORNIA (No. Street, Town, County, State)

The automobile will be principally garaged and used in the above Town, County and State, unless otherwise specified herein.

The occupation of the Named Insured is DAIRYMAN (or, if married women, give husband's occupation or business) Employed by SELF

Item 2. Policy Period: From the 22nd day of MAY, 19 41 to the 22nd day of MAY, 19 42 (12 M. A. M., Standard Time, at the address of the Named Insured as stated herein.

Item 3. The insurance afforded is only with respect to such and so many of the following Coverages as are indicated by a specific premium charge or charges not opposite thereto. The limit of the Company's liability against each such Coverage shall be as stated herein, subject to all of the terms of the policy having reference thereto.

(If issued as Actual Value Policy, insert words "Actual Cash Value" in lieu of amount of insurance.)

COVERAGES	Limits of Liability		No. Autos	PREMIUM AUTO 1	PREMIUM AUTO 2
A—Bodily Injury Liability	$ 10,000 each person and subject to that limit for each person	$ 20,000 each accident	X X	$ 23.00	$
B—Property Damage Liability	$5,000.00 each accident		X X	$ 9.00	$
C—Comprehensive Cover (Excluding Collision)	$			$	$
D—Fire, Lightning and Transportation				$	$
E—Theft, Robbery and Pilferage				$	$
Collision or Upset	Actual Cash Value less ..... (Deductible)		X X	$	$

SAMPLE

AMERICAN GENERAL INSURANCE COMPANY
HOUSTON, TEXAS

AMENDATORY ENDORSEMENT—AUTOMOBILE POLICY

Policy No. Ac 131186

It is agreed that the policy is amended as follows:

1. Section II, Paragraph (1), Definition of "Insured," is amended by the addition of the following new sub-paragraph:

"(d) to any person or organization with respect to any trailer while used with any automobile not covered by like insurance in the company."

2. Exclusion (a) is amended by the deletion of the words: "in the business of demonstrating or testing, or."

3. The second clause of exclusion (c) is amended to read:
"or while any trailer covered by this policy is used with any automobile owned or hired by the Named Insured and not covered by like insurance in the company."

4. Exclusion (d) is amended to read:
"while the automobile is operated (1) by any person under the minimum age required to obtain a license to operate a private passenger automobile in the state, federal district or territory, or province in which the automobile is registered or in which the accident occurs, whichever is lower; or (2) by any person under the age of fourteen years."

5. Exclusion (f) is eliminated.

6. The words "issued to," are deleted from exclusion (g).

7. The word "automobile" wherever used shall include under Coverages A and B a trailer other than a trailer home, while used exclusively for personal, pleasure or family purposes, other than business purposes, with any private passenger automobile insured hereunder.

8. The paragraph titled "CANCELLATION" under the heading "GENERAL CONDITIONS," is amended to read as follows:
"This policy may be cancelled by the Named Insured by mailing written notice to the Company stating when thereafter such cancellation shall be effective. This policy may be cancelled by the Company by mailing written notice to the Named Insured at the address shown in this policy stating when not less than five days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice and the insurance under this policy shall end on the effective date and hour of cancellation stated in the notice. Delivery of such written notice either by the Named Insured or by the Company shall be equivalent to mailing; if the Named Insured cancels, earned premium shall be computed in accordance with the customary short rate table. If the Company cancels, earned premium shall be computed pro rata. Premium adjustment may be made at the time cancellation is effected and, if not then made, shall be made as soon as practicable after cancellation becomes effective. The Company's check or the check of its representative mailed or delivered as aforesaid shall be sufficient tender of any refund of premium due to the Named Insured."

SUPPLEMENTAL POLICY PROVISION

9. Use of Other Private Passenger Automobiles. Such insurance as is afforded by the policy for bodily injury liability and for property damage liability also applies subject to the following provisions:

1. The insurance applies
   (a) to the Named Insured, if an individual and the owner of the automobile classified as "pleasure and business" or if husband and wife either or both of whom own such automobile, and
   (b) to the spouse of such individual if a resident of the same household and to the employer of such Named Insured, as insured,

   with respect to the operation of any other private passenger automobile by such Named Insured or spouse or by a private chauffeur or domestic servant in the employ of either of them, and with respect to the presence of such Named Insured or any other private passenger automobile.

2. The insurance does not apply
   (a) to any automobile (1) owned in full or in part by or registered in the name of the Named Insured or any member of the household thereof, other than a private chauffeur or domestic servant employed in connection therewith, or (2) hired as part of a frequent use of hired automobiles by or furnished for regular use to the Named Insured, a member of the household thereof, or a private chauffeur or domestic servant employed in connection therewith; nor, with respect to such employer, to any automobile owned in full or in part by him or registered in his name or hired by him as a part of a frequent use of hired automobiles;
   (b) to any insured other than as defined in paragraph 1;
   (c) under the condition stated in divisions (a), (b) and (d) of Section II, Paragraph (1) of the policy.

3. The insurance shall be excess insurance over any other valid and collectible insurance available to the insured, either as an insured under a policy applicable with respect to the automobile or otherwise, against a loss covered hereunder.

Gus S Wortham

President

The American General Insurance Company

(A Stock Company, Co. specify company name and Company)

[illegible]

COVERAGE A—BODILY INJURY LIABILITY

To pay on behalf of the Insured all sums which the Insured shall become obligated to pay by reason of the liability imposed upon him by law for damages, including Damages for care and loss of services, and for death, as the result of bodily injury, sustained by any person or persons, caused by accident and arising out of the ownership, maintenance or use of the automobile.

COVERAGE B—PROPERTY DAMAGE LIABILITY

To pay on behalf of the Insured all sums which the Insured shall become obligated to pay by reason of the liability imposed upon him by law for damages, because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance or use of the automobile.

COVERAGE C—COMPREHENSIVE COVERAGE (Excluding Collision)

To pay for any loss of or damage to the automobile and its operating equipment while attached thereto, including radio (including radio tubes), antenna, [illegible] to the EXCLUSIONS stated below and except that the Company shall not be liable under this comprehensive coverage for loss caused by Collision with any other object or by the Upset. Breakage of Glass and Damage caused directly by Tornado, Cyclone, Windstorm, Hail, Falling Aircraft or parts thereof and damage resulting from Theft, Earthquake, Typhoon, Riot, Acts of Attempted a strike, Insurrection or Civil Commotion shall not be deemed a loss caused by Collision or Upset.

EXCLUSIONS: This policy does not cover: a. (1) Loss or use (2) Depreciation (3) Loss resulting to earn and other personal effects; b. (1) Wear and tear, (2) Mechanical or electrical breakdown, failure or breakage; (3) Freezing; (4) Damage to tires, EXCEPTING where such damage shall be directly caused by and resulting from other loss or damage which is covered hereunder; c. (1) Loss of or damage sustained by theft, robbery or pilferage unless the entire automobile is stolen; d. Loss or damage due to (1) Wrongful Conversion, Embezzlement or secretion by a chauffeur, servant, lessee, or other person in lawful possession of the insured property under a mortgage, conditional sale, lease or other contract or agreement, whether written or verbal; (2) War, Invasion, Military, Naval or Usurped Power; (3) Confiscation or authorized destruction by any duly constituted Governmental or Civil Authorities; e. (1) While the automobile is used as a public or livery conveyance for carrying passengers for compensation; (2) While used under or subject to lease; (3) While used in any Block or jobbed trade or transportation; (4) While subject to any Lien, Mortgage or other encumbrance not specifically described herein.

Anything herein contained shall vary, alter or extend any of the terms and conditions of this policy except as stated in this paragraph.

(If collision is also covered under this policy, the premium, limits and loss of coverage must be separately specified Coverages F-1 or F-2.

COVERAGE D—FIRE, LIGHTNING AND TRANSPORTATION

To pay for any direct loss or damage to the automobile and its operating equipment while attached thereto, including radio (including radio tubes), caused by (a) Fire, arising from any cause whatsoever, and Lightning; (b) the Stranding, Sinking, Burning, Collision or Derailment of any conveyance in or upon which the automobile is being transported on land or water, including general average and salvage charges for which the Insured is legally liable.

COVERAGE E—THEFT, ROBBERY AND PILFERAGE

To pay for any direct loss or damage to the automobile and its operating equipment while attached thereto, including radio (including radio tubes), caused by Theft, Robbery and Pilferage, excluding by any person or persons in the Insured's household, or in the Insured's employ, or employment, whether the theft, robbery or pilferage occurs during the hours of such service or employment or not, and excluding by any person or persons acting in collusion with any person in the employ of the Insured; or by any person acting under express or implied authority of the Insured, or voluntarily parts with title and/or possession, whether or not induced to do so by any fraudulent scheme, trick, device or false pretense; and excluding in any case, other than the theft of the entire automobile described herein, the theft, robbery or pilferage of tools or repair equipment.

This policy does not insure against the wrongful conversion, embezzlement or secretion by a mortgagee, vendor, lessee or other person in lawful possession of the insured property under a mortgage, conditional sale, lease or other contract or agreement, whether written or verbal.

COVERAGE F-1—COLLISION OR UPSET

To pay for any direct loss or damage to the automobile and its operating equipment while attached thereto, including radio (including radio tubes), caused by Accidental Collision or Upset, when the damage to the automobile resulting from such collision or upset is in excess of the deductible specified in Item [illegible] of this policy, such collisions shall be deemed a separate claim and the amount of determined loss or damage shall be not exceed the lesser of the actual cost of repairing the damaged parts and replacing with materials of the kind and quality the parts damaged or destroyed. If there be more than one insured hereunder the collision premium and additional accidental amount applicable to each automobile shall be set forth in a schedule attached to and forming a part of this policy.

COVERAGE F-2—ACCUMULATIVE COLLISION OR UPSET (Self-Insured)

To pay for any direct loss or damage in excess of an aggregate amount equal to the charged premium stated in Item 3, COVERAGE F-2, of the automobile and its operating equipment while attached thereto, including radio (including radio tubes), caused by accidental Collision or Upset and excluding in any event loss or damage: (1) caused directly or indirectly by fire, (2) to any tire, unless caused in an Accidental Collision or Upset which also causes other loss or damage to the insured automobile. Upon the occurrence of a Collision the Assured shall within ten (10) days thereafter file with the Company a statement and description of such Collision and of all damage to the automobile resulting therefrom, and within thirty (30) days after said Collision shall file with the Company all receipted bills or other satisfactory evidence of the payment by the Assured for repairs or replacement occasioned by such Collision. If and when the aggregate total amount of such losses resulting from collisions as reports and authorized security within the policy period reaches or exceeds an amount equal to the charged premium stated in Item 3, COVERAGE F-2, the Assured will be automatically against all further Collision loss in excess of last amount of the Company; provided that all other non-collision shall be reported to the Company immediately upon the occurrence thereof.

The losses making up said aggregate amount equal to the charged premium stated in Item 3, COVERAGE F-2, shall be limited to the necessary cost of repairing damaged parts and replacing with materials of the kind and quality the parts damaged or destroyed. If there be more than one insured hereunder the collision premium and additional accidental amount applicable to each automobile shall be set forth in a schedule attached to and forming a part of this policy.

Section II. This policy includes the following provisions in regards Coverages A and B:

(1) DEFINITION OF "INSURED". The so-called word "Insured" wherever used in Coverages A and B and in their parts of this policy, when applicable to such Commercial vehicles, is only the Named Insured but also any person while using the automobile and any person or organization legally responsible for the use thereof, provided the actual use of the automobile is within the scope of the consent of the Insured and actual use of the automobile is "Pleasure and Business" or "Commercial" such as follow: herein and provided further the actual use is with the permission of the Named Insured. The provisions of this paragraph do not apply: (a) to any person or organization with respect to bodily injury to or death of any person who is a Named Insured; (b) to any person or organization, or to any employee thereof, operating an automobile hired by the public or used with a garage, sales agency, service station or public parking place, with respect to any accident arising out of the operation thereof; (c) to any employee of an Insured with respect to any action by such employee and resulting from injury to or death of another employee of the same Insured injured in the course of such employment in an accident arising out of the maintenance or use of the automobile in the business of such Insured.

(2) DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS. It is further agreed that as respects insurance afforded by this policy under Coverages A and B the Company shall: (a) defend in the name and behalf any suit against the Insured alleg the such injury or destruction and seeking damages on account thereof, even if such suit is groundless, false or fraudulent, but the Company shall have the right to make such investigation, negotiation and settlement of any claim or suit as they deem expedient; (b) pay all premiums on bonds to release attachments for an amount not to exceed the applicable limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, but without any liability on the part of the Company to apply for or furnish such bonds; all costs taxed against the Insured in any such suit, all expenses incurred by the Company, all interest accruing after entry of judgment until the Company has paid, tendered or deposited in court such part of such judgment as does not exceed the limit of the Company's liability thereon; and expenses incurred by the Insured in the event of bodily injury, for such immediate medical and surgical relief to others as shall be necessary at the time of accident. The Company agrees to pay the expenses incurred under Insured (a) and (b) of this section in addition to the applicable limit of liability of this policy.

Section III. This policy applies only to accidents which occur and to those loss to the property insured which are sustained during the policy period while the automobile is within the United States of America, Canada or Newfoundland, or while on a vessel crossing grade within said territory, and is owned, maintained and used for the purposes stated in applicable section in the Declarations.

Section IV. AUTOMATIC INSURANCE FOR NEWLY ACQUIRED AUTOMOBILES. If the Named Insured who is the owner of the automobile acquires ownership of another automobile such insurance as is afforded by this policy applies also to such other automobile of the date of the delivery to him, subject to the following additional conditions: (1) If the Company insures all automobiles owned by the Named Insured at the date of such delivery, insurance applies to such other automobile; (2) If the Company insures less than all automobiles owned by the Named Insured as specified in the Declarations, insurance applies to such other automobile only if it replaces an automobile described in the policy, or if the Company insures all automobiles owned by the Named Insured at the date of such delivery, insurance applies to such other automobile if it replaces an automobile described in the policy and may be classified in the same classification as the automobile so replaced; (3) The insurance applies to such other automobile only from the date of delivery thereof and only for the remainder of the policy period; (4) The insurance does not apply to any such other automobile if, at the inception of any other policy issued by the Company covering such other automobile, the Named Insured has other insurance upon the replaced automobile of the type of such insurance, and (5) The insurance does not apply to any loss or damage which the Named Insured has other insurance covering such other automobile, or would have other insurance covering such other automobile but for the exhaustion of the limits of liability thereunder, or (6) unless the Named Insured notifies the Company within ten days after the date of delivery of such other automobile and pays to the Company the premium applicable to such other automobile from the date of delivery to the end of the policy period; (7) If the Named Insured has other insurance covering such other automobile, or would have other insurance covering such other automobile but for the exhaustion of the limits of liability thereunder, or (8) unless the Named Insured pays any additional premium required because of the application of this paragraph, the (2) and (3) of this section shall not apply.

Section V. USE OF THE PRIVATE PASSENGER AUTOMOBILES—COVERAGES A AND B. If the automobile described in the Declarations is of the private passenger type, such insurance as is afforded in this policy for Bodily Injury Liability and for Property Damage Liability under Coverages A and B also applies: (1) to the Named Insured if an individual and the owner of the private passenger automobile described in this policy, hereinafter called the "Named Insured"; and to the wife or husband of such Named Insured, if an individual, and a resident of the household of such Named Insured; (2) if the Named Insured is a partnership, and the private passenger automobile is owned by either or both, hereinafter called the "Named Insured", with respect to the operation of any other private passenger automobile by any such Named Insured, or by private chauffeur or domestic servant in the employ of any such Named Insured's wife and husband, or by any other private passenger automobile, but only if: (a) Such use is pleasure and business as defined in this policy and (b) Such use is with the permission of the person having the right of possession and (c) The automobile is not (1) owned by, rented or leased to, or furnished for the regular use of the Named Insured's household, (2) other than a private chauffeur or domestic servant employed in connection therewith, or (3) hired or used as a livery, passenger car, or for any business purpose.

(3) Under any of the above Coverages while the automobile is being driven by any unlicensed person or operator under the age of 16 years, or while being used in violation of the provisions of the law of any state, province or country relating to the operation of motor vehicles by persons under the age of 16 years.

(4) Under Coverage A, to any bodily injury to or death of any employee of the Insured while engaged in the business of the Insured other than domestic employment, or in the operation, maintenance or repair of the automobile, or any liability for which the Insured may be held liable under any Workmen's Compensation Law.

(5) Under Coverage A, to bodily injury to or death of any person or persons arising from and occurring in the operation of the automobile, the Insured and/or any "Commercial" or from that such persons are liable and/or is being used for purposes other than the business of the Named Insured.

(6) Under Coverage B, for property owned by, rented to, leased to, in charge of or transported to any Insured.

(7) Under Coverages A, B, C, and D, for any liability assumed directly or indirectly by contract, express or implied, or arising out of contract, express or implied, or for any liability in excess of the liability imposed by law.

(8) Under Coverages A, B, C, and D, for any liability arising against, including effects of war, whether [illegible]

ACTION AGAINST COMPANY [illegible] the Insured shall have fully complied with all the conditions [illegible]

[illegible]

Bankruptcy or insolvency of the Insured shall not relieve the Company of any of its obligations hereunder.

[illegible] State of Oregon [illegible]

OTHER INSURANCE If the Insured has other insurance against a loss covered by this policy the Company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the Declarations bears to the total applicable limit of liability of all valid and collectible insurance [illegible]

ASSIGNMENT [illegible] the Named Insured shall [illegible]

LIMITS OF LIABILITY Coverage A [illegible]

LIMITS OF LIABILITY Coverages A and B [illegible] the limits of this Company's liability.

FINANCIAL RESPONSIBILITY LAWS Coverages A and B [illegible]

ASSISTANCE AND COOPERATION OF THE INSURED The Insured shall cooperate with the Company and, upon the Company's request, shall assist in effecting settlements, securing and giving evidence, [illegible] at the time of the accident.

SPECIAL CONDITIONS APPLICABLE ONLY TO COVERAGES C, D, E, F-1 and F-2

LIMITATION OF LIABILITY AND METHOD OF DETERMINING SAME This Company's liability for loss or damage to the automobile shall not exceed the actual cash value thereof at the time any loss or damage occurs, [illegible]

In the event of loss or damage to the automobile, [illegible]

OTHER INSURANCE No recovery shall be had under this policy if at the time a loss occurs there be any other insurance, whether such other insurance be valid, and/or collectible, [illegible]

LOSS FOR WHICH CARRIER AND/OR BAILEE FOR HIRE IS LIABLE This Company shall not be liable for loss or damage to the automobile while in the possession of a carrier and/or bailee for hire under a contract, [illegible] Where loss or damage [illegible] this Company will advance to the Insured [illegible] this Company's [illegible] after deducting cost and expense of collection.

LIEN OR ENCUMBRANCE Unless otherwise provided by agreement in writing added hereto, and except as to any lien, mortgage or other encumbrance specifically set forth and described in Item 6 of the Declarations, this Company shall not be liable for loss or damage to any property insured hereunder while subject to any lien, mortgage, or other encumbrance.

TITLE AND OWNERSHIP Except as to any lien, mortgage, or other encumbrance specifically set forth and described in Item 6 of the Declarations, this policy shall be void, unless otherwise provided by agreement in writing added hereto, if the interest of the Insured in the subject of this insurance be or become other than unconditional and sole [illegible] and not returned [illegible] or in case of any change in the nature of the insurable interest of the Insured in the property described herein either by sale or otherwise, or if this policy or any part thereof shall be assigned before loss.

PROTECTION OF SALVAGE In the event of any loss or damage, whether insured against hereunder or not, the Insured shall protect the property from other or further loss or damage, and any such other or further loss or damage [illegible] shall not be recoverable under this policy. Any such act [illegible] shall be considered as done for the benefit of all concerned [illegible] under this policy, then all reasonable expenses thus incurred shall also constitute a claim under this policy; provided, however, that this Company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by this Company.

APPRAISAL In case the Insured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. [illegible] upon such umpire, then, [illegible] in which the appraisal is pending. The appraisers shall then appraise the loss and damage [illegible] only to the umpire. An award in writing [illegible] binding upon the Insured, any loss payee or mortgagee, and this Company. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

ABANDONMENT — RETURN OF STOLEN PROPERTY It shall be optional with this Company to take all or any part of the property at the agreed or appraised value, but there can be no abandonment thereof to this Company; and where theft is insured against, this Company shall have the right to return a stolen automobile or its equipment with compensation for physical damage, at any time before actual payment hereunder.

PAYMENT OF LOSS This Company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal, [illegible] and the loss shall in no event become payable until sixty (60) days after the notice, [illegible] not until sixty days after an award has been made by the appraisers.

NOTICE OF LOSS In the event of loss or damage, the Insured shall give immediate notice thereof in writing to this Company.

In the event of Theft, Robbery or Pilferage, the Insured shall also give immediate notice thereof to the Police.

ASSISTANCE AND COOPERATION OF THE INSURED In the event of loss or damage and whenever requested by this Company, the Insured shall assist in the recovery of property insured hereunder, [illegible] and prosecuting suits to such an extent and in such a manner as is [illegible] by this Company, and this Company shall reimburse the Insured for any expense incurred at its request.

PROOF OF LOSS Within sixty (60) days after loss or damage for which claim is made, unless such time is extended in writing by this Company, the Insured shall render a statement to this Company signed and sworn to by the Insured, stating the place, time and cause of such loss or damage, the interest of the Insured and of all others in the property, the sound value thereof and the amount of loss or damage thereto, all encumbrances thereon, and all other insurance, whether valid and collectible or not, covering such property, [illegible] statements within the time provided, [illegible] and submit to examinations under oath, [illegible] all books of account, bills, invoices, and other vouchers, [illegible] and shall permit extracts and copies thereof to be made.

BAR OF RECOVERY No suit or action on this policy for the recovery of any claim hereunder shall be sustainable in any court of law or equity unless the Insured shall have fully complied with all the foregoing requirements, nor unless commenced within one (1) year next after a cause of action shall exist.

GENERAL CONDITIONS

AUTOMOBILE DEFINED TWO OR MORE AUTOMOBILES Except where specifically stated to the contrary, the word "automobile" wherever used in this policy shall mean the motor vehicle, trailer or semi-trailer described herein; and the word "trailer" shall include semi-trailer. When two or more automobiles are insured hereunder, the terms of this policy shall apply separately to each, but as respects the limits of bodily injury liability and property damage liability, a motor vehicle and a trailer or trailers attached thereto shall be held to be one automobile.

DECLARATIONS By acceptance of this policy the Named Insured agrees that the statements in the Declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations, and that this policy embodies all agreements existing between himself and the Company or any of its agents relating to this insurance.

NON-WAIVER CLAUSE This Company shall not be held to have waived any provision or condition, or exclusion of this policy, or any forfeiture of this policy, or be held to have admitted liability, by any act or proceeding on its part relating to any examination, or investigation, or negotiation, or appraisal, herein provided for, or by any act or proceeding relating to any defense undertaken.

MISREPRESENTATION AND FRAUD This entire policy shall be void if the Insured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud, attempted fraud, or false swearing by the Insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

SUBROGATION In the event of any payment under this policy, the Company shall be subrogated to all the Insured's rights of recovery therefor and the Insured shall execute all papers required and shall do everything that may be necessary to secure such rights.

CHANGES No notice to any agent or knowledge possessed by any agent or by any other person, shall be held to effect a waiver or change in any part of this policy or estop the Company from asserting any right under the terms of this policy, nor shall the terms of this policy be waived or changed except by endorsement issued to form a part hereof, signed by the President, Vice-President or a Secretary of the Company and countersigned by a duly authorized agent of the Company; provided, however, that changes may be made in the written portion of the Declarations by endorsement [illegible] signed by a duly authorized agent of the Company.

CANCELLATION This policy may be cancelled by the Named Insured upon notice to the Company stating when thereafter such cancellation shall be effective, [illegible] the customary short rate premium for the expired term. This policy may be cancelled by the Company by mailing written notice to the Named Insured at the address shown in the policy stating when not less than five days thereafter such cancellation shall be effective, [illegible] the pro rata premium for the expired term. The [illegible] stated in the notice. [illegible] shall be a sufficient tender of any refund of premium due to the Named Insured. [illegible]

STATUTORY PROVISION Any and all provisions of this policy which are in conflict with the statutes of the State wherein this policy is issued are understood, declared and acknowledged by this Company to be amended to conform to such statutes.

Wherefore, plaintiff prays for a judgment and declaration of the rights and obligations of the parties hereto arising out of the matters herein alleged by having the court determine that the plaintiff is under no obligation, liability or responsibility either to defend the action brought in the Superior Court of the State of California, in and for the County of Butte, by L. L. Booze against Frank Vincent, an individual, and Frank Vincent doing business under the firm name and style of Vincent's Dairy, or to pay any judgment, if any there be, which may be entered in any event, in favor of said L. L. Booze and against said Frank Vincent, individually or otherwise. Plaintiff prays for such other and further relief as to the court may seem proper.

BETTS & GARRISON
By JOHN A. LOOMIS
Attorneys for Plaintiff

Attached is Exhibit "A" (photostatic copy of policy.)

[Endorsed]: Filed Aug 27 1942 [6]

Short Rate Cancellation Table

FOR THE TERM OF ONE YEAR

Days Policy in Force	Percentage to be charged as retained
1 day	2
2 days	4
3	5
4	6
5	7
6	8
7	9
8	10
9	11
10	12
11	13
12	14
13	15
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290	140
295	141
300	142
305	143
310	144
315	145
320	146
325	147
330	148
335	149
340	150
345	151
350	152
355	153
360	154
365	155
366	156

Note: Percentages of the above table are not subject to any interpolation for periods not given. For example, the charge for 22 days shall be 19% and so on up to one year.

WHAT TO DO IN THE EVENT OF AN ACCIDENT

1. Obtain name and address of injured and where taken after accident.
2. Obtain names, addresses and telephone numbers of ALL witnesses.
3. Do not express an opinion as to your responsibility for the accident. Remember that your policy covers your LEGAL liability and only a thorough investigation can determine that. Possibly the other party involved will be required by law to reimburse you for your damage.
4. If another car is involved in the accident, secure name and address of owner, make and license number of car, and if insured, the name of the insuring company.
5. Any accident, no matter how small, should be reported to the Agent whose name appears on the face of your policy.
6. In case of serious or fatal accident, wire or telephone the available details, including policy number if possible, to the General Agent whose name appears below or to the Home Office of the Company.

CRAVENS, DARGAN & FOX
General Agents
114 Sansome Street
San Francisco, California

FOR HOME OFFICE USE ONLY

Cancelled Policy Registered	Car Months Returned

Return Prem. Verified

A STOCK COMPANY

AUTOMOBILE COMBINATION POLICY
OPTIONAL COVERAGE FORM

No. 131184

ISSUED TO

FRANK L. VINCENT

Premium - - - - - $ 32.00

Expires MAY 22nd 1942

CRAVENS, DARGAN & FOX
General Agents
SAN FRANCISCO, CALIFORNIA

American General

Insurance Company

HOUSTON, TEXAS

PLEASE READ YOUR POLICY

Western Edition 1940

[Title of Court and Cause.]

ANSWER OF DEFENDANT L. L. BOOZE

Comes now defendant, L. L. Booze, and answering the complaint of plaintiff on file herein by way of answer, alleges, admits and denies as follows, to-wit:

FIRST DEFENSE

The complaint fails to state a claim against defendant upon which relief can be granted.

SECOND DEFENSE

Defendant admits Paragraphs I, II, III and IV of said complaint.

Defendant admits Paragraph V of said complaint.

Defendant admits Paragraph VI of said complaint, excepting that defendant denies the last paragraph thereof, and alleges that the amount of the controversy between the various defendants and plaintiff is not in excess of Three Thousand and no/100 ($3000.00) Dollars in that the amount of damages cannot be ascertained at this time.

Defendant denies Paragraph VII.

Answering Paragraph VIII, defendant alleges that the matters therein referred to are matters to be decided in the action in the complaint alleged to be now pending before the Superior Court of the County of Butte, State of California, and being Butte County No. 18996, and specifically referred to in Paragraph VI of said complaint, and that in said action last mentioned all of the issues involved herein as to the liability of the plaintiff will be determined, and there is another action involving

the issues involved herein, the Butte County action last referred to.

Answering Paragraph IX and X, defendant, L. L. Booze, incorporates by reference the answer made to Paragraph VIII above. [7]

Wherefore, answering defendant, L. L. Booze, prays as follows, to-wit:

1. That the above action be dismissed.

2. That plaintiff take nothing by its said action, but that the answering defendant, L. L. Booze, have judgment for his costs incurred herein.

J. OSCAR GOLDSTEIN and
JAMES WM. MORGAN
Attorneys for defendant, L. L. Booze, 142 W. Second St., Chico, California

[Endorsed]: Filed Sep 18 1942. [8]

[Title of Court and Cause.]

ANSWER OF DEFENDANTS FRANK L. VINCENT, AN INDIVIDUAL, AND FRANK L. VINCENT DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF VINCENT'S DAIRY

Come now the defendants Frank L. Vincent, an individual, and Frank L. Vincent doing business under the firm name and style of Vincent's Dairy, and answering the complaint of plaintiff, for cause of answer allege, admit and deny as follows, to-wit:

FIRST DEFENSE

The complaint fails to state a claim against defendants upon which relief can be granted.

SECOND DEFENSE

Defendants admit paragraphs I, II, III and IV, of said complaint.

Defendants admit paragraph V of said complaint except they deny that the said Vernon Booze, a minor, referred to therein was riding in a standing position on a step located at the back end of the 1940 Dodge truck referred to therein.

Defendants admit paragraph VI, excepting that they deny the last paragraph thereof, and allege that the amount of the controversy between the various defendants and plaintiff is not in excess of Three Thousand Dollars ($3000.00).

Defendants deny paragraph VII.

Answering paragraph VIII, the defendants allege that the matters therein referred to are matters to be decided in the action in the complaint alleged to be now pending before the Superior Court of the County of Butte, State of California, and being Butte [9] County No. 18996, and specifically referred to in paragraph VI of said complaint, and that in said action last mentioned all of the issues involved herein as to the liability of the plaintiff will be determined, and there is another action involving the issues involved herein, the Butte County action last referred to.

Wherefore, answering defendants pray as follows, to-wit:

1. That the above action be dismissed.
2. That plaintiff take nothing by its said action,

but that answering defendants have judgment for their costs incurred herein.

PETERS AND PETERS

Attorneys for Answering Defendants Frank L. Vincent, an individual, and Frank L. Vincent doing business under the firm name and style of Vincent's Dairy 304 Broadway, Chico, California.

[Endorsed]: Filed Sep 16 1942. [10]

[Title of Court and Cause.]

MOTION TO DISMISS AND NOTICE OF MOTION

The defendants move the Court as follows:

1. To dismiss the action because the complaint fails to state a claim against said defendants upon which relief can be granted.

2. To dismiss the action because the Court has no jurisdiction of the subject matter of this action inasmuch as the complaint on file herein to which is attached the policy of insurance issued by plaintiff to the defendant Frank L. Vincent discloses that it is merely a policy to pay any judgment that may be rendered against Frank L. Vincent and/or Frank L. Vincent doing business under the firm name and style of Vincent's Dairy, for personal injury caused by the operation of the 1940 Dodge one-ton canopy truck therein mentioned, and that no judgment has been rendered, and *therefor* no controversy can

be had thereover until such judgment be rendered, and *therefor* the controversy in question does not exceed the sum of Three Thousand Dollars ($3000.00), and the Court is without the jurisdiction to entertain the same.

3. To dismiss the action upon the ground that there is another action pending involving the same issues involved in the present action, namely the action of "L. L. Booze, plaintiff, versus Frank Vincent, an individual, Frank Vincent doing business under the firm name and style of Vincent's Dairy, et al, defendants", which said action is pending in the Superior Court of the County of Butte, State of California, and is case No. 18996, all of which is [11] disclosed in the complaint of plaintiff on file herein, to which said complaint reference is hereby made, and which is incorporated herein, and made a part hereof.

PETERS AND PETERS

Attorneys for Answering Defendants Frank L. Vincent, an individual, and Frank L. Vincent doing business under the firm name and style of Vincent's Dairy, 304 Broadway, Chico, California.

To Betts and Garrison
Attorneys for Plaintiff

Please take notice that the undersigned will bring the above motion on for hearing before this Court in the Courtroom thereof in the Federal Building on "I" Street between Fifth Street and Sixth Street, in the City of Sacramento, County of Sac-

ramento, State of California, on Monday, the 19th day of October, 1942, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

PETERS AND PETERS

Attorneys for defendants Frank L. Vincent, an individual, and Frank L. Vincent doing business under the firm name and style of Vincent's Dairy, 304 Broadway, Chico, California.

(Attached is Affidavit of Service by Mail)

[Endorsed]: Filed Sep 16 1942. [12]

[Title of Court and Cause.]

MOTION TO DISMISS AND NOTICE OF MOTION

The defendant, L. L. Booze, move the Court as follows:

1. To dismiss the action because the complaint fails to state a claim against said defendants upon which relief can be granted.

2. To dismiss the action because the Court has no jurisdiction of the subject matter of this action inasmuch as the complaint on file herein to which is attached the policy of insurance issued by plaintiff to the defendant Frank L. Vincent discloses that it is merely a policy to pay any judgment that may be rendered against Frank L. Vincent and/or Frank L. Vincent doing business under the firm name and style of Vincent's Dairy, for personal

injury caused by the operation of the 1940 Dodge one-ton canopy truck therein mentioned, and that no judgment has been rendered, and there is no controversy can be had thereover until such judgment be rendered, and therefor the controversy in question does not exceed the sum of Three Thousand and no/100 ($3000.00) Dollars, and the Court is without the jurisdiction to entertain the same.

3. To dismiss the action upon the ground that there is another action pending involving the same issues involved in the present action, namely the action of "L. L. Booze, plaintiff, versus Frank L. Vincent, an individual, Frank L. Vincent doing business under the firm name and style of Vincent's Dairy, et al, defendants", which said action is pending in the Superior Court of the County of Butte, State of California, and is case No. 18996, all of which is disclosed in the complaint of plaintiff on file herein, to which said complaint [13] reference is hereby made, and which is incorporated herein, and made a part hereof.

J. OSCAR GOLDSTEIN and
JAMES WM. MORGAN
Attorneys for L. L. Booze, defendant, 142 W. Second St., Chico, California.

To: Betts and Garrison
Attorneys for Plaintiff:

Please take notice that the undersigned will bring the above motion on for hearing before this Court in the Courtroom thereof in the Federal Building

on "I" Street between Fifth Street and Sixth Street, in the City of Sacramento, County of Sacramento, State of California, on Monday the 19th day of October, 1942 at 10:00 o'clock A.M. in the forenoon of that day or as soon thereafter as counsel can be heard.

J. OSCAR GOLDSTEIN and
JAMES WM. MORGAN
Attorneys for L. L. Booze, defendant, 142 W. Second Street, Chico, Calif.

(Attached is Affidavit of Service by Mail)

[Endorsed]: Filed Sep 18 1942 [14]

[Title of Court and Cause.]

NOTICE OF APPEAL

To the Above Entitled Court: To the Defendant L. L. Booze and J. Oscar Goldstein and James Wm. Morgan, His Attorneys: To the Defendant Frank L. Vincent, an Individual, and Frank L. Vincent, Doing Business Under the Firm Name and Style of Vincent's Dairy, and to Messrs. Peters and Peters, His Attorneys:

Notice Is Hereby Given that American General Insurance Company, plaintiff above named, hereby appeals to The Circuit Court of Appeals for the Ninth Circuit, from the Order of Court dismissing

the Complaint, and from the final Judgment entered on said Order on the 25th day of February, 1943.

Dated: April 2, 1943

BETTS & GARRISON
By FORREST A. BETTS
Attorneys for Appellant American General Insurance Company, a corporation

[Endorsed]: Filed Apr 5 1943. [15]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Thursday the 25th day of February, in the year of our Lord one thousand nine hundred and 43.

Present: The Honorable Martin I. Welsh, District Judge.

No. 4526

AMERICAN GENERAL INSURANCE COMPANY, a corporation,

Plaintiff,

vs.

L. L. BOOZE, FRANK L. VINCENT, etc.,

Defendants

ORDER GRANTING MOTIONS TO DISMISS

The motions of defendants L. L. Booze and Frank L. Vincent having been heretofore heard and sub-

mitted, being now fully considered, it is Ordered that the motions of defendants L. L. Booze and Frank L. Vincent be and the same are hereby granted. [16]

[Title of District Court and Cause.]

DESIGNATION OF DOCUMENTS ON APPEAL

Comes Now the plaintiff in the above-entitled action, and by way of designation of documents to be prepared on appeal, in accordance with Rule 75 of the New Federal Procedure, does hereby designate the following:

(1) The complaint;

(2) Answer of defendant L. L. Booze;

(3) Answer of Frank L. Vincent, individually, and Frank L. Vincent, doing business under the firm style and name of Vincent's Dairy;

(4) Motion to Dismiss and Notice of Motion filed by and on behalf of the defendant Frank L. Vincent, [17] individually and doing business under the firm style and name of Vincent's Dairy;

(5) Motion to Dismiss and Notice of Motion filed by and on behalf of the defendant L. L. Booze;

(6) The Opinion or ruling of the Court determining that the Motions to Dismiss should be granted;

(7) Order or Judgment of the Court on the 25th day of February, 1943, granting the Motions to Dismiss and Dismissing the Complaint herein;

(8) Notice of Appeal;

(9) Designation of Documents on appeal.

Dated this 2nd day of April, 1943.

BETTS & GARRISON
By FORREST A. BETTS
Attorneys for Appellant, American General Insurance Company, a Corporation

[Endorsed]: Filed April 5, 1943 [18]

CERTIFICATE OF CLERK, U. S. DISTRICT COURT TO TRANSCRIPT ON APPEAL

I, Walter B. Maling, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 18 pages, numbered from 1 to 18, inclusive, contain a full, true and correct transcript of certain records and proceedings in the case of American General Insurance Company, a corporation, vs. L. L. Booze, Frank L. Vincent, et al., No. 4526, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the Designation of Documents on Appeal, copy of which is embodied herein.

I further certify that the cost of preparing and certifying the foregoing record on appeal is the sum of Seven and 10/100 ($7.10) Dollars, and that the same has been paid to me by the attorney for the appellant herein.

In witness whereof, I have hereunto set my hand and the official seal of said District Court, this 23rd day of April, A.D. 1943.

[Seal] WALER B. MALING,
Clerk
By T. M. LAMPERT
Deputy Clerk.

[Endorsed]: No. 10412. United States Circuit Court of Appeals for the Ninth Circuit. American General Insurance Company, a corporation, Appellant, vs. L. L. Booze, Frank L. Vincent, an individual, Frank L. Vincent, doing business under the firm name and style of Vincent's Dairy, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division.

Filed April 26, 1943.

PAUL P. O'BRIEN
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10412

AMERICAN GENERAL INSURANCE COMPANY, Appellant,

vs.

L. L. BOOZE, et al Respondents.

POINTS AND AUTHORITIES UPON WHICH APPELLANT INTENDS TO RELY

That the Court committed error in its Ruling granting Defendants' Motions to Dismiss, in that, under the facts stated in the Complaint, this is a proper cause for *aj*udication in the Federal Court under the Federal Declaratory Relief Act— and that the complaint contains all of the necessary elements to bring the cause within the requirements of the law.

Dated this 1st day of May, 1943.

BETTS & GARRISON,
By FORREST A. BETTS,
Attorneys for Appellant.

State of California,
County of Los Angeles—ss:

Bernice Barie, being first duly sworn, says:

That affiant is a citizen of the United States and a resident of Los Angeles County; that affiant is over the age of 18 years and is not a part*o* to the within action; that her business address is 419 Title

Insurance Building, Los Angeles, California; that on the 1st day of May, 1943, she served the within Points and Authorities on the Respondents in said action by placing a true copy in an envelope addressed to the respective attorneys of record for said respondents, at the office address of said attorneys, as follows: "Messrs. Oscar Goldstein and James Wm. Morgan, 142 West 2nd Street, Chico, California, and Messrs. Peters & Peters, 304 Broadway, Chico, California, and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the U. S. Post Office at Los Angeles, California, where is located the office of the attorneys for the person by and for whom said service was made.

That there is a delivery service by U. S. Mail at the place so addressed.

BERNICE BARIE,

Subscribed and sworn to before me this 1st day of May, 1943.

[Seal] M. MOORE,
Notary Public in and for said County and State.

[Endorsed]: Filed May 3, 1943.

No. 10412

United States
Circuit Court of Appeals
For the Ninth Circuit.

AMERICAN GENERAL INSURANCE COMPANY, a corporation,

Appellant,

vs.

L. L. BOOZE, FRANK L. VINCENT, an individual, FRANK L. VINCENT, doing business under the firm name and style of Vincent's Dairy,

Appellees.

SUPPLEMENTAL
Transcript of Record

Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division

Rotary Colorprint, 590 Folsom St., San Francisco

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

Attest:

[Seal] C. W. CALBREATH,
Clerk, District Court of the U. S. Northern District of California.
By F. M. LAMPERT,
Deputy Clerk.

[Endorsed]: Filed Jun 8, 1943.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Above Entitled Court: To the Defendant L. L. Booze and J. Oscar Goldstein and James Wm. Morgan, His Attorneys: to the Defendant Frank L. Vincent, an Individual, and Frank L. Vincent, Doing Business Under the Firm Name and Style of Vincent's Dairy, and to Messrs. Peters and Peters, His Attorneys:

Notice Is Hereby Given that American General Insurance Company, plaintiff above named, hereby appeals to The Circuit Court of Appeals for the Ninth Circuit, from the Judgment of Dismissal en-

tered in the above entitled matter on the 8th day of June, 1943.

Dated this 31st day of July, 1943.

BETTS & GARRISON,
By FORREST A. BETTS,
Attorneys for Appellant American General Insurance Company, a Corporation.

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

Attest:

[Seal] C. W. CALBREATH,
Clerk, District Court of the U. S. Northern District of California.
By F. M. LAMPERT,
Deputy Clerk.

[Endorsed]: Filed Aug 2, 1943.

[Title of District Court and Cause.]

DESIGNATION OF DOCUMENTS ON APPEAL

Comes Now the plaintiff in the above-entitled action, and by way of designation of documents to be prepared on appeal, in accordance with Rule 75 of the New Federal Procedure, does hereby designate the following:

(1) Judgment of Dismissal in the above-entitled action, entered on June 8, 1943.

Dated this 31st day of July, 1943.

BETTS & GARRISON,
By FORREST A. BETTS,
Attorneys for Appellant, American General Insurance Company, a Corporation.

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

Attest:

[Seal] C. W. CALBREATH,
Clerk, District Court of the U. S. Northern District of California.
By F. M. LAMPERT,
Deputy Clerk.

[Endorsed]: Filed Aug. 2, 1943.

[Endorsed]: No. 10412. United States Circuit Court of Appeals, for the Ninth Circuit. American General Insurance Company, Appellant, vs. L. L. Booze, Frank L. Vincent, an individual and Frank L. Vincent, Doing Business Under the Firm Name and Style of Vincent's Dairy, Appellees. Supplemental Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division.

Filed: August 24, 1943.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.